United Nations A/AC.254/4/Add.3/Rev.4

General Assembly

Distr.: General
23 November 1999

Original: English

Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime
Sixth session
Vienna, 6-17 December 1999
Item 3 (b) of the provisional agenda*
Consideration of the aditional legal instruments: draft instrument against trafficking in persons, especially women and children, with particular emphasis on articles 8-18

Revised draft Protocol to Prevent, Suppress and Punish[1] Trafficking in Persons, Especially Women and Children,[2] Supplementing the United Nations Convention against Transnational Organized Crime[3]

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* A/AC.254/20.

[1] At the second session of the Ad Hoc Committee, two delegations suggested that the Protocol should focus on the prevention, investigation and prosecution of trafficking, leaving aside the question of punishment.

[2] The terms "persons, especially women and children" and "persons" are used throughout the draft text, as appropriate.

At the second session of the Ad Hoc Committee, almost all expressed their preference that the Protocol address all persons rather than only women and children, although particular attention should be given to the protection of women and children. At the informal consultations held during the fifth session of the Ad Hoc Committee, one delegation suggested the words "especially women and children" should follow the word "persons" every time it appeared in the text.

On the recommendation of the Commission on Crime Prevention and Criminal Justice and the Economic and Social Council, the Third Committee approved a draft resolution entitled "Draft United Nations Convention against Transnational Organized Crime and the draft protocols thereto", in which the General Assembly would decide that the additional international instrument being prepared by the Ad Hoc Committee addressing trafficking in women and children should address trafficking in all persons, but especially women and children, and would request the Ad Hoc Committee to make any corresponding changes to the draft instrument.

[3] The proposal contained in the present document is based on a combined draft text submitted by the Governments of Argentina and the United States of America pursuant to the commitment that they undertook at the first session of the Ad Hoc Committee (see A/AC.254/9). It supersedes the proposals submitted by the United States (A/AC.254/4/Add.3) and Argentina (A/AC.254/8) and takes into account comments made at the first and second sessions of the Ad Hoc Committee (see in particular A/AC.254/5/Add.3). It also incorporates the amendments submitted by Argentina (A/AC.254/L.17). Some delegations suggested that the title of the Protocol should also refer to the "protection of trafficked persons".

At the fifth session of the Ad Hoc Committee, the delegations of Belgium, Poland and the United States submitted a reformulated version of the draft Protocol (A/AC.254/5/Add.13) at the request of

The States Parties to this Protocol,

Taking note of the United Nations Convention against Transnational Organized Crime (hereinafter referred to as "the Convention"),

Gravely concerned by the significant and increasing activities of transnational criminal organizations and others that profit from international trafficking in persons,

Believing that women and children are particularly vulnerable to and targeted by transnational criminal organizations engaged in trafficking in persons,

Declaring that effective action to combat international trafficking in persons, especially women and children, requires a comprehensive, international approach in the countries of origin, transit and destination that includes measures to prevent such international trafficking, to punish[4] the traffickers and to protect the victims of such trafficking, including by protecting their internationally recognized human rights,

Taking into account the fact that, despite the existence of a variety of international instruments containing rules and practical measures to combat the sexual exploitation of women and children, there is no universal instrument that addresses all aspects of trafficking in persons,

Concerned that, in the absence of such an instrument, persons who are vulnerable to trafficking will not be sufficiently protected,

Recalling General Assembly resolution 53/111 of 9 December 1998, in which the Assembly decided to establish an open-ended intergovernmental ad hoc committee for the purpose of elaborating a comprehensive international convention against transnational organized crime and of discussing the elaboration of, *inter alia*, an international instrument addressing trafficking in women and children,

Convinced that supplementing the Convention with an international instrument for the prevention, suppression and punishment[5] of trafficking in persons, especially women and children, will be useful in combating that crime,

Taking into account the provisions of the Convention,[6]

Have agreed as follows:

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the Chairman of the Ad Hoc Committee. At the informal consultations held during the fifth session, it was suggested that that version be used in future negotiations (see A/AC.254/19/Add.1).

[4] See footnote 1 above.

[5] See footnote 1 above.

[6] Two delegations noted that the draft Protocol should also take into account work being done in other international forums (i.e. the proposed convention concerning the prohibition and immediate elimination of the worst forms of child labour, which was being drafted by the International Labour Organization (ILO) and the draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (see A/AC.254/5/Add.3 and the report of the open-ended inter-sessional working group on a draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography on its fifth session, held in Geneva from 25 January to 5 February 1999 (E/CN.4/1999/74)). Two other delegations suggested that, in the preamble to the draft Protocol, reference should be made to relevant conventions.

Article 1[7]

Option 1[8]

Purpose

1. The purpose of this Protocol is to promote and facilitate cooperation among States Parties to prevent, investigate and [prosecute] [punish][9] international trafficking in persons, particularly[10] for the purpose of forced labour or sexual exploitation,[11] paying particular attention to the protection of women and children,[12] who are so often the victims of such trafficking.

2. The purpose is, in particular, to encourage States Parties to undertake:[13]

(a) To adopt effective measures to prevent trafficking in persons, especially women and children, as defined in this Protocol, and to punish[14] severely those who engage in that activity;

(b) To ensure that victims of trafficking in persons, especially women and children, receive appropriate protection;[15]

(c) To promote cooperation among States Parties in order to combat more effectively trafficking in persons, especially women and children;

(d) To provide in appropriate cases for the safe and voluntary[16] return of victims to their countries of origin or of habitual residence or to a third country;

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[7] At the second session of the Ad Hoc Committee, some delegations suggested that a non-discrimination clause should be added as new article 1 of the draft Protocol.

[8] At the informal consultations held during the fifth session of the Ad Hoc Committee, the majority of the delegations reiterated their preference for this option. Several delegations suggested merging the first paragraphs of the two options together. The delegation of Argentina suggested that the first paragraphs be merged to read as follows: "The purpose of this Protocol is the prevention, suppression and punishment of international trafficking in persons, especially women and children, and the promotion and facilitation of cooperation among States Parties to meet the objectives."

[9] At the informal consultations held during the fifth session of the Ad Hoc Committee, suggestions were made to replace the word "punish" with the word "prosecute" or "combat" or, alternatively, to insert the word "prosecute" in front of the word "punish" (see also footnote 1 above).

[10] At the informal consultations held during the fifth session of the Ad Hoc Committee, there was general agreement on broadening the purpose of the draft Protocol. The delegations recommended adding the word "particularly" so that the Protocol would not cover only forced labour and sexual exploitation.

[11] At the second session of the Ad Hoc Committee, several delegations expressed the view that the terms "sexual exploitation" and "forced labour" should be defined in the text. A number of delegations supported a broad definition of both terms so as to ensure that the Protocol would cover all forms of exploitation. Two delegations suggested that the definition of forced labour should include cases of "forced marriage" or "marriage of convenience". One delegation suggested further that the definition should cover cases of forced domestic work. Another delegation suggested the addition of the words "involuntary servitude" to the article on the purpose of the Protocol (see also footnote 28 below).

[12] At the second session of the Ad Hoc Committee, one delegation suggested that the words "regardless of the sex of the child" should be inserted after the word "children".

[13] At the second session of the Ad Hoc Committee, one delegation suggested that the principle of non-interference into domestic affairs should be reflected in an appropriate way.

[14] See footnote 1 above.

[15] At the second session of the Ad Hoc Committee, one delegation suggested the addition of the words "where necessary" at the end of paragraph 2 (b) of article 1.

[16] At the second session of the Ad Hoc Committee, a number of countries suggested that the word "voluntary" be deleted if paragraph 2 was to be retained. At the first session, one delegation reminded the Ad Hoc Committee that if victims were returned to their countries of origin against their will, international law regarding refugees was applicable. At the second session of the Ad Hoc Committee, another delegation suggested that the Protocol should ensure the protection of victims against deportation.

(e) To inform and educate the public about the causes and consequences of trafficking in persons; and

(f) To provide victims with appropriate legal, medical, psychological and financial assistance whenever States Parties deem it necessary.[17]

Option 2 *Purpose*[18]

1. The purpose of this Protocol is the prevention, suppression and punishment[19] of international trafficking in persons, especially women and children.

2. To that end, States Parties undertake:

(a) To adopt effective measures, in accordance with their domestic law, to prevent trafficking in persons, especially women and children, as defined in this Protocol, and to punish[20] severely those who engage in that activity;

(b) To ensure the protection of women and children, in accordance with their best interests;

(c) To adopt relevant penal and administrative provisions for the purpose of preventing, suppressing and punishing[21] international trafficking in persons, especially women and children;

(d) To establish a system of judicial cooperation between States Parties that will facilitate the prosecution of unlawful acts connected with international trafficking in persons, especially women and children;

(e) To inform and educate the public about the causes and consequences of trafficking in persons;

(f) To prevent any type of penalty being imposed on persons, especially women and children, who are victims of international trafficking; and

(g) To abolish progressively those practices which allow a husband, family or clan to order the transfer of a woman to another person for payment or otherwise for the benefit of an international criminal organization.

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[17] At the second session of the Ad Hoc Committee, the delegations of a number of countries supported the view that paragraph 2 of article 1 was unnecessary and should be deleted, since it repeated provisions that appeared later in the draft Protocol. At the informal consultations held during the fifth session of the Ad Hoc Committee, delegations agreed to return to this paragraph after the rest of the draft Protocol had been discussed.

[18] The text of this article was proposed by Argentina at the second session of the Ad Hoc Committee (see A/AC.254/L.17).

[19] See footnote 1 above.

[20] See footnote 1 above.

[21] See footnote 1 above.

Article 2

Option 1[22] *Scope of application*

1. This Protocol shall apply to [international][23] trafficking in persons as defined in paragraph 2 of this article.

2. For the purposes of this Protocol, "trafficking in persons"[24] means the recruitment, transportation, transfer, harbouring or receipt of persons, either by the threat or use of abduction,[25] force, fraud, deception or coercion,[26, 27] or by the giving or receiving of unlawful payments or benefits to achieve the consent of a person having control over another person, [with the aim of submitting them to any form of exploitation, as specified in article [...]].[28, 29]

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[22] At the second session of the Ad Hoc Committee, many delegations expressed their preference for this option. One delegation suggested merging the text of the two options. At the informal consultations held during the fifth session of the Ad Hoc Committee, the same discussion ensued and the majority of the delegations were in favour of deleting option 2.

[23] At the informal consultations held during the fifth session of the Ad Hoc Committee, there was general agreement on inserting the word "international" in brackets in this paragraph. Many delegations were in favour of inserting the word in order to bring the scope of this draft Protocol in line with that of the draft Convention. However, some delegations expressed the view that the Protocol should protect all persons and that the inclusion of the word would make its scope too limited. Several delegations also expressed the view that the term "international trafficking" should be defined in order to clarify what situations would be covered under the Protocol.

[24] At the second session of the Ad Hoc Committee, some delegations suggested that the term "trafficking" should be defined in the text. The question was raised whether trafficking in persons would also include the transportation of a person within a State or whether it necessitated crossing an international border. At the informal consultations held during the fifth session of the Ad Hoc Committee, one delegation suggested moving this paragraph to article 2 *bis* (Definitions).

[25] At the informal consultations held during the fifth session of the Ad Hoc Committee, there was general agreement on replacing the word "kidnapping" with the word "abduction".

[26] At the second session of the Ad Hoc Committee, one delegation expressed concern that it would be difficult to prove "coercion" in practice.

[27] At the second session of the Ad Hoc Committee, one delegation suggested the insertion of the words "or debt bondage" between the words "coercion" and "or". At the informal consultations held during the fifth session of the Ad Hoc Committee, one delegation suggested including the subject of debt bondage in the text. Several delegations suggested that it was covered under the term "forced labour". Several other delegations suggested that it could be covered under another term defined in the draft Protocol. There was no objection to the subject of debt bondage being covered under the draft Protocol.

[28] At the second session of the Ad Hoc Committee, two delegations proposed that a new paragraph be added after this paragraph to define the term "forced labour". Some delegations wished to ensure that all forms of exploitation would be covered under the Protocol (see also footnote 11 above). One delegation suggested inserting the words "involuntary servitude" after the words "forced labour". Another delegation felt that any definition of exploitation needed careful examination and restriction. One delegation expressed its concern that a definition might end up being too broad, which in turn might hamper the implementation of the Protocol. Some delegations suggested that the reference made in option 2, paragraph 2 (d) (vii), to extraction of body organs or organic tissue should be included in option 1, paragraph 2. One delegation suggested that the scope of application of the Protocol should include pornographic material involving women or children, as referred to in option 2, paragraph 2 (d) (iv).

[29] At the informal consultations held during the fifth session of the Ad Hoc Committee, there was general agreement on replacing the words "for the purpose of sexual exploitation or forced labour" with these words in brackets.

3. For purposes of this Protocol, trafficking in persons for the purpose of [sexual exploitation][30] includes subjecting to such trafficking a child under eighteen years of age,[31] regardless of whether that child has consented.[32]

Option 2 *Scope of application and definitions*[33]

1. The provisions of this Protocol shall apply to any child or woman who is, or habitually resides, in a State Party at the time of commission of an act of international trafficking of which that person is a victim.[34]

2. For the purposes of this Protocol, the following definitions shall apply:

(a) "Child" shall mean[35] any person under eighteen years of age;

(b) "Trafficking in children" shall mean any act carried out or to be carried out for an illicit purpose or aim by a criminal organization, jointly or through any of its members, that involves:

(i) Promoting, facilitating or coordinating the kidnapping, holding or hiding of a child, with or without his or her consent, for profit or otherwise, repeatedly or on one occasion; or

(ii) Offering, delivering or receiving a child in exchange for money or any other payment in kind, or serving as an intermediary in those acts;

(c) "Trafficking in women" shall mean any act carried out or to be carried out for an illicit purpose or aim by a criminal organization, jointly or through any of its members, whether on behalf of another or not, whether for profit or not and whether repeatedly or not, that involves:

(i) Promoting, facilitating or coordinating the kidnapping, holding or hiding of a woman, with or without her consent, for illicit purposes or in order to force her to perform, not perform or tolerate an act or to subject her unlawfully to the power of another person;

(ii) Transporting a woman to or facilitating her entry into another State;

(d) "Illicit purpose or aim" shall mean:

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[30] At the informal consultations held during the fifth session of the Ad Hoc Committee, there was general agreement on placing the words "sexual exploitation" in brackets so that the scope of this paragraph would not be limited to sexual exploitation. The delegations expressed the view that the exact wording should be agreed on at a later stage.

[31] At the second session, some delegations drew the attention of the Ad Hoc Committee to the fact that the concept of "age of consent" might not be in line with the Convention on the Rights of the Child. At the informal consultations held during the fifth session of the Ad Hoc Committee, there was general agreement on replacing the words "under the age of consent in the jurisdiction where the offence occurs" with the words "under eighteen years of age". One delegation suggested that the term "child" should be defined in new article 2 *bis*.

[32] At the informal consultations held during the fifth session of the Ad Hoc Committee, many delegations reiterated the view that consent was irrelevant when exploitation involved children.

[33] At the second session of the Ad Hoc Committee, some delegations suggested that if definitions were to be included in the draft Protocol, they should be placed before the scope of the Protocol.

[34] The text of this paragraph was proposed by Argentina at the second session of the Ad Hoc Committee (see A/AC.254/L.17).

[35] At the second session of the Ad Hoc Committee, one delegation suggested replacing the words "shall mean" with the words "shall include".

(i) Reduction to slavery, servitude or other similar condition;

(ii) Maintenance of a person in such a condition in order to demand, under the threat of some penalty, the performance of forced and compulsory labour to which the person has not voluntarily consented or in order to force the person, in accordance with custom or by agreement, for payment or free of charge, to provide certain services without the freedom to change his or her condition;

(iii) The prostitution or other form of sexual exploitation of a woman or child, even with the consent of that person;

(iv) Any means of production, distribution or importation, in their present or future form, of graphic or audio-visual material focused on the sexual conduct of women or children or on the genitals of such persons;

(v) The organization, promotion or use of tourism-related activities or journeys involving the sexual exploitation of women;

(vi) Promoting, facilitating or coordinating acts aimed at rendering uncertain, changing or annulling the marital status of a woman, in any manner or by any means, whether for payment or not or for the promise thereof, whether in accordance with a traditional or customary practice or not and with or without the use of threats or abuse of authority;[16] or

(vii) Extraction of body organs or organic tissue.[17]

Article 2 bis[18]

Definitions

For the purpose of this Protocol, the following definitions shall apply:

(a) "Sexual exploitation"[19] shall mean:

[16] At the informal consultations held during the fifth session of the Ad Hoc Committee, many delegations suggested retaining in the draft Protocol the concept contained in subparagraph 2 (c) (vi).

[17] At the informal consultations held during the fifth session of the Ad Hoc Committee, many delegations suggested that this type of exploitation should be covered under the Protocol.

[18] At the informal consultations held during the fifth session of the Ad Hoc Committee, consensus was reached on recommending to the plenary the addition of a new article on definitions in order to bring this draft Protocol in line with the other draft Protocols. One delegation suggested that all articles of the three draft Protocols should be structured similarly. The terms defined in this article were based on a proposal by the United States (A/AC.254/L.54).

[19] The discussion on the definition of "sexual exploitation" at the informal consultations held during the fifth session of the Ad Hoc Committee was based on the proposal submitted by the United States (A/AC.254/L.54). Two delegations expressed reservations regarding the proposal. The Netherlands suggested replacing the definition of the term "sexual exploitation" with a definition of the term "slavery" that reads as follows: "Slavery shall mean the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised, including forced prostitution and servitude and other practices similar to slavery as defined in article 1 of the 1956 Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery."

(i) Of an adult, [forced][40] prostitution, sexual servitude or participation in the production of pornographic materials, for which the person does not offer herself or himself with free and informed consent;[41]

(ii) Of a child, prostitution, sexual servitude or use of a child in pornography;[42, 43]

(b) "Forced labour"[44] shall mean all work or service extracted from any person under the threat [or][,] use of force [or coercion],[45] and for which the person does not offer herself or himself with free and informed consent [, except:

(i) In countries where imprisonment with hard labour may be imposed as a punishment for a crime, the performance of hard labour in pursuance of a sentence to such punishment by a competent court;

(ii) Any work or service not referred to in subparagraph (b) (i) of this article that is normally required of a person who is under detention in consequence of a lawful order of a court or of a person during conditional release from such detention;

(iii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iv) Any service extracted in cases of emergency or calamity threatening the life or well-being of the community;

(v) Any work or service that forms part of normal civil obligations of the State concerned; or

(vi) Minor communal services of a kind that, being performed by the members of a community in the direct interest of that community, can therefore be considered as

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[40] At the informal consultations held during the fifth session of the Ad Hoc Committee, the majority of the delegations suggested deleting the word "forced". Several delegations also noted that it might be difficult for victims of prostitution to prove that they had been "forced". However, several delegations expressed the view that it was essential to distinguish the victims of prostitution from those who had chosen to engage in prostitution.

[41] The proposal by the United States (A/AC.254/L.54) contained the phrase "for which the person does not offer herself or himself voluntarily", which was based on the wording in the Convention Concerning Forced or Compulsory Labour (ILO Convention No. 29), article 2, paragraph 1. At the informal consultations held during the fifth session of the Ad Hoc Committee, consensus was reached on recommending the replacement of the word "voluntarily" with the words "with free and informed consent".

[42] At the informal consultations held during the fifth session of the Ad Hoc Committee, one delegation suggested that the subject of paedophilia should be covered by the definition of the term "sexual exploitation". Alternatively, the subject of paedophilia could be included in a definition of the term "sexual servitude". The delegation suggested that the draft Protocol should take into account the work being done on the draft optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (see footnote 6 above).

[43] Prior to the fifth session of the Ad Hoc Committee, some delegations had suggested that there was a need to refer to "profit" as an element of trafficking in persons for the purpose of sexual exploitation. Other delegations had expressed the view that an explicit reference to profit was unnecessary and that the draft Protocol should cover crime committed for its own sake. At the informal consultations held during the fifth session of the Ad Hoc Committee, one delegation suggested again that there was a need to refer to profit as an element of trafficking in persons for the purpose of sexual exploitation.

[44] The discussion on the definition of the term "forced labour" at the informal consultations held during the fifth session of the Ad Hoc Committee was based on the proposal by the United States (A/AC.254/L.54).

[45] At the informal consultations held during the fifth session of the Ad Hoc Committee, several delegations suggested including the word "coercion", which in their view was a broader term than "force". Several delegations expressed reservations regarding the inclusion of the word "coercion".

normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives have the right to be consulted with regard to the need for such services].[46]

Article 3

Obligation to criminalize[47]

1. Each State Party shall adopt such measures as may be necessary to establish as criminal offences under its domestic law the conduct set forth in [paragraph 2] [paragraphs 2 and 3][48] of article 2 and shall impose penalties that take into account the grave nature of those offences.

2. Each State Party shall also adopt such measures as may be necessary to establish as criminal offences under its domestic law the following conduct and shall impose penalties that take into account the grave nature of those offences:

(a) Attempting to commit an offence set forth in [paragraph 2] [paragraphs 2 and 3] of article 2;

(b) Participating as an accomplice in the commission of an offence set forth in [paragraph 2] [paragraphs 2 and 3] of article 2;

(c) Organizing or directing others to commit an offence set forth in [paragraph 2] [paragraphs 2 and 3] of article 2; or

(d) In any other way contributing to the commission, by a group of persons acting with a common purpose, of an offence set forth in [paragraph 2] [paragraphs 2 and 3] of article 2; such contribution shall be intentional and shall either be made with the aim of furthering the general criminal activity or criminal purpose of the group or be made in the knowledge of the intention of the group to commit the offence concerned.

3. The knowledge, intent or purpose required to commit an offence set forth in [paragraph 2] [paragraphs 2 and 3] of article 2 or in paragraph 2 of this article may be inferred from objective factual circumstances.[49]

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[46] Both the International Covenant on Civil and Political Rights and ILO Convention No. 29 specify exceptions to what is considered forced labour. Subparagraphs (b) (i)-(v) of the proposed text are virtually identical to article 8, paragraphs 3 (b) and (c), of the International Covenant on Civil and Political Rights, which may provide a clearer and more up-to-date standard than ILO Convention No. 29. Subparagraph (b) (vi) is taken from article 2, paragraph 2 (e), of ILO Convention No. 29. Further consideration should be given to deciding whether it would be useful to include any exceptions to the term "forced labour", in particular if "trafficking in persons ... for the purpose of forced labour" is linked to the activities of an organized criminal group. At the informal consultations held during the fifth session of the Ad Hoc Committee, consensus was not reached on whether to retain these exceptions or not. Several delegations suggested deferring the question concerning these exceptions to the national legislation of the States Parties to the Protocol. It was agreed to recommend keeping the exceptions in brackets for further discussion.

[47] At the fourth session of the Ad Hoc Committee, several delegations suggested that this article should be consistent with the relevant articles of the draft Convention and in the draft Protocol against the Smuggling of Migrants by Land, Air and Sea, Supplementing the United Nations Convention against Transnational Organized Crime.

[48] The reference to the conduct to be criminalized depends on the choice to be made regarding the content of article 2.

[49] At the fourth session of the Ad Hoc Committee, some delegations suggested that this subparagraph should be deleted, while others stated that it should be retained as the wording was used in the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988.

Article 4[50]

Assistance for and protection of victims of trafficking in persons[51]

1. [In appropriate cases and to the extent possible under domestic law,][52] States Parties shall protect the privacy of victims of crimes covered by this Protocol by maintaining the confidentiality of legal proceedings[53] related to trafficking in persons.

2. In addition to measures provided pursuant to article 7 of this Protocol, each State Party shall ensure that its legislative framework contains measures that permit providing,[54] in appropriate cases:

(a) Information to victims of crimes covered by this Protocol with regard to the relevant court and administrative proceedings;

(b) Assistance to victims of crimes covered by this Protocol, enabling their views and concerns to be presented and considered at appropriate stages of the criminal proceedings against the offenders, in a manner not prejudicial to the rights of the defence;

(c) Appropriate housing, education and care for children in governmental custody;[55] and

(d) Appropriate housing, economic assistance, psychological, medical and legal support for the victims of crimes covered by this Protocol.[56]

3. Each State shall endeavour to provide for the physical safety of victims of crimes covered by this Protocol while they are within its territory.

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[50] At the fourth session of the Ad Hoc Committee, some delegations proposed additional provisions regarding the protection of victims of trafficking. Italy proposed amendments to articles 4 and 5 (see A/AC.254/L.30) and the inclusion of a non-discrimination clause under new article 3 *bis*. The Holy See also proposed additional language for article 4 (see A/AC.254/L.32).

[51] Article 4 in document A/AC.254/4/Add.3, dealing with victims, was expanded into four separate articles (articles 4-7) in this draft, each addressing a different aspect of victim assistance. At the fourth session of the Ad Hoc Committee, some delegations reiterated their commitment to maintain a balance between providing protection and assistance for trafficked persons on the one hand and law enforcement on the other.

[52] At the fourth session of the Ad Hoc Committee, some delegations suggested removing the brackets from the words "to the extent possible under domestic law".

[53] At the fourth session of the Ad Hoc Committee, some delegations stressed that it might not be possible to maintain confidentiality of legal proceedings as a general rule. However, some delegations stated that it might not be necessary to reword this subparagraph if the phrase in the brackets relating to domestic law was retained (see footnote 52 above).

[54] At the fourth session of the Ad Hoc Committee, some delegations from developing countries expressed concern that the economic situation in their countries might make it difficult for their Governments to implement some of these provisions.

[55] At the fourth session of the Ad Hoc Committee, some delegations stressed the need to strengthen the protection of children under this Protocol, in line with the Convention on the Rights of the Child (General Assembly resolution 44/25, annex) (see A/AC.254/5/Add.3).

[56] The text of this subparagraph was proposed by Argentina at the second session of the Ad Hoc Committee (see A/AC.254/L.17).

Article 5

[Status][Situation][57] of the victim in the receiving State

1. In addition to measures provided pursuant to article 7 of this Protocol, each State Party shall [consider][58] enacting immigration laws[59] that permit victims of trafficking in persons to remain in its territory, temporarily or permanently, in appropriate cases.[60]

2. Each State Party shall give appropriate consideration to humanitarian and compassionate factors in determining the status of such a victim in its territory when it is the receiving State Party.[61]

Article 5 bis[62]

Seizure and confiscation of gains

States Parties shall take all necessary and appropriate measures to allow the seizure and confiscation of gains obtained by the criminal organizations from the offences described in this Protocol. The proceeds from such seizure and confiscation shall be used to defray the costs of providing due assistance to the victim, where deemed appropriate by States Parties and as agreed by them, in conformity with individual guarantees enshrined in their domestic legislation.

[57] At the fourth session of the Ad Hoc Committee, a decision was made to insert the word "situation" next to the word "status" and to put each of those words in brackets.

[58] At the fourth session of the Ad Hoc Committee, several delegations suggested more obligatory language such as "shall consider" or "shall enact".

[59] At the fourth session of the Ad Hoc Committee, some delegations suggested replacing the words "immigration laws" with the words "legislation or other measures".

[60] At the fourth session of the Ad Hoc Committee, some delegations proposed to delete the words "in appropriate cases", while others suggested inserting those words before the word "permanently".

[61] At the fourth session of the Ad Hoc Committee, France and the United Kingdom of Great Britain and Northern Ireland suggested merging the two paragraphs of this article as follows: "In addition to measures provided pursuant to article 7 of this Protocol, each State Party shall enact and adopt measures that permit victims of trafficking in persons after due consideration to humanitarian and compassionate factors to remain in its territory, temporarily or, in appropriate cases, permanently."

Morocco suggested new wording for paragraph 1 and Colombia suggested new wording for paragraph 2 (see A/AC.254/5/Add.12).

[62] The text of this article was proposed by Argentina at the second session of the Ad Hoc Committee (see A/AC.254/L.17). At the fourth session of the Ad Hoc Committee, the majority of the delegations suggested deleting this article.

Article 6[63]

Return[64] *of victims*[65] *of trafficking in persons*

1. Each State Party agrees to facilitate and accept, without delay,[66] the return of a victim of trafficking in persons[67] who is a national of that State Party or who had the right of abode[68] in the territory of that State Party at the time of entry into the receiving State.[69, 70]

2. At the request of a State Party that is the receiving State, each State Party shall, without [undue or unreasonable][71] delay, verify whether a person who is a victim of such trafficking is a national of the requested State.

3. In order to facilitate the return of victims of such trafficking who are without proper documentation, the State Party of which such a victim is a national or in which he or she had the right of abode at the time of entry into the receiving State shall agree to issue, at the request of the receiving State, such travel documents or other authorization as may be necessary to enable the person to re-enter its territory.[72]

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[63] Two delegations suggested that several articles in this Protocol should be based on articles contained in the proposals of Canada and the United States regarding the draft protocol against smuggling of migrants. The articles of this Protocol thus adapted are articles 6, 9, 10, 11, 14 and 15.

[64] At the fourth session of the Ad Hoc Committee, some delegations suggested replacing the word "return" with the word "repatriation".

[65] At the fourth session of the Ad Hoc Committee, some delegations suggested that the word "victims" should be replaced with the words "trafficked persons".

[66] At the fourth session of the Ad Hoc Committee, some delegations suggested deleting the words "without delay".

[67] At the fourth session of the Ad Hoc Committee, some delegations raised concern about who should bear the cost associated with the repatriation of victims.

[68] At the fourth session of the Ad Hoc Committee, some delegations stated that there was a need to clarify the term "right of abode". For example, it was not clear whether it included right to transit or temporary residence. In this context, Mexico suggested replacing the word "had" with the word "has".

[69] At the fourth session of the Ad Hoc Committee, some delegations expressed the view that repatriation of the victims should be based on consent. Consensus was not reached regarding repatriation of the victims in the absence of such consent. In this context, bilateral and multilateral agreements should be encouraged. Some delegations also stated that special consideration should be given to repatriation of children.

[70] At the fourth session of the Ad Hoc Committee, Mexico proposed new paragraphs 1 *bis* and 1 *ter* (see A/AC.254/5/Add.12).

[71] At the fourth session of the Ad Hoc Committee, it was agreed that the words "undue or unreasonable" should be placed in brackets.

[72] At the fourth session of the Ad Hoc Committee, China suggested adding the following new paragraph after paragraph 3 of this article: "3 *bis*. The receiving State of victims of trafficking shall provide necessary facilities for the return of victims."

Article 7

Victim rehabilitation[73]

1. Each State Party shall ensure that its legislative framework[74] contains[75] measures that provide victims of trafficking in persons with access[76] to adequate procedures[77] for seeking:

(a) Compensation for damages, including compensation coming from fines, penalties or, where possible, forfeited proceeds or instrumentalities of perpetrators of trafficking in persons;[78] and

(b) Restitution from the offenders.[79]

2. Each State Party shall consider implementing measures to provide for the physical, psychological and social recovery of victims of and witnesses to crimes covered by this Protocol, in order to foster their health, self-respect and dignity, in a manner appropriate to their age, gender and special needs.[80, 81]

Article 8[82]

Law enforcement measures

1. In addition to adopting the measures provided for in this article and pursuant to article 16 of this Protocol, law enforcement authorities of States Parties shall, as appropriate, cooperate with one another by exchanging information to enable them to determine:

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[73] At the fourth session of the Ad Hoc Committee, some delegations suggested that the title of this article should be changed to "Compensation and restitution of victims" or "Victim reintegration".

[74] At the fourth session of the Ad Hoc Committee, some delegations suggested replacing the words "legislative framework" with the words "domestic law".

[75] At the fourth session of the Ad Hoc Committee, some delegations suggested inserting the words "or permits" after the word "contains".

[76] At the fourth session of the Ad Hoc Committee, one delegation suggested that such access should be available to victims who return to their country of origin or habitual residence of choice.

[77] At the fourth session of the Ad Hoc Committee, one delegation suggested including a specific provision for children.

[78] At the fourth session of the Ad Hoc Committee, some delegations expressed concern about linking compensation to fines, penalties and confiscated proceeds, while others suggested incorporating into this article the idea of using proceeds from confiscation and seizure to benefit victims, a provision contained in article 5 *bis*. The Holy See suggested inserting after subparagraph 1 (b) of this article the second sentence of article 5 *bis*.

[79] At the fourth session of the Ad Hoc Committee, Austria suggested replacing subparagraphs (a) and (b) of this paragraph with the following: "(a) compensation for damages; and (b) restitution". It was further suggested that the terms should be defined in a footnote.

[80] At the fourth session of the Ad Hoc Committee, some delegations suggested incorporating paragraph 2 of this article into article 4.

[81] At the fourth session of the Ad Hoc Committee, China suggested including a new article, 7 *bis*, entitled "Measures to eliminate trafficking in women and children [persons]" (see A/AC.254/L.52).

[82] Law enforcement and cooperation provisions (e.g. technical assistance, seizure of assets and information exchange) should be included only insofar as they go beyond those contained in the draft Convention. Article 16 will incorporate provisions from the draft Convention that are applicable to the subject matter of this Protocol. The draft Protocol will therefore have to be reviewed and any redundancies removed when the text of the draft Convention has been developed more fully.

(a) Whether individuals crossing or attempting to cross an international border with travel documents belonging to other persons or without travel documents are perpetrators or victims of trafficking in persons;

(b) Whether individuals have used or attempted to use altered or falsified documentation to cross an international border for the purpose of trafficking in persons;

(c) The methods used by groups for transporting victims of such trafficking under false identities, or with altered or falsified documentation, and the measures for detecting them; and

(d) Methods and means used for trafficking in persons, including recruitment, routes and links between and among individuals and groups engaged in such trafficking.

2. Each State Party shall provide or strengthen training to prevent trafficking in persons for law enforcement, immigration and other relevant officials. The training should focus on methods used in preventing such trafficking, prosecuting the traffickers and protecting the rights of the victims and should encourage cooperation with appropriate non-governmental organizations.

Article 9[53]

Border controls

1. Each State Party shall adopt such measures as may be necessary to detect and prevent trafficking in persons between its territory and that of any other State Party by strengthening border controls, including by checking persons and travel or identity documents and, where appropriate, by inspecting and seizing vehicles and vessels.

2. Each State Party shall adopt such training and other measures as may be necessary to ensure that victims of such trafficking, who are detected being trafficked by means of legal or illegal migration receive appropriate protection from the traffickers.

Article 10[54]

Security of travel documents

1. States Parties shall adopt such measures as may be necessary to ensure that travel or identity documents issued by them are of such quality that they cannot readily be unlawfully altered, replicated, issued or otherwise misused.

2. Each State Party shall adopt such measures as may be necessary to ensure the integrity and to control the lawful creation, issuance, verification, use and acceptance of travel or identity documents issued by or on behalf of the State Party.

Article 11[55]

Verification of documents

Each State Party shall, at the request of another State Party and subject to the domestic laws of the requested State, verify without undue or unreasonable delay the

[53] See footnote 63 above.

[54] See footnote 63 above.

[55] See footnote 63 above.

legitimacy and validity of travel or identity documents issued in the name of the requested State and suspected of being used for trafficking in persons.

Article 12

Prevention of trafficking in persons

1. Each State Party shall consider establishing social policies and programmes to prevent:

(a) Trafficking in persons; and

(b) The revictimization of trafficked persons, especially women and children.

2. States Parties [shall endeavour to]:[86]

(a) Undertake, including through non-governmental organizations, information campaigns and programmes to generate public awareness of the gravity of offences relating to international trafficking in persons. Such programmes should include information on potential victims, causes and consequences of such trafficking, penalties for unlawful acts and the risks that such offences represent to the life and health of the victims;

(b) Establish methods for gathering data and promote research to determine the modus operandi of international trafficking in persons;

(c) Encourage, within the private sector, the establishment of professional associations, foundations, non-governmental organizations and research institutes concerned with the problem of international trafficking in persons; and

(d) Disseminate information relating to the different forms of international trafficking in persons and undertake programmed actions to combat such trafficking.

3. States Parties [shall][87] [are encouraged to][88] provide the Secretary-General of the United Nations with a list of non-governmental organizations devoted to preventing the unlawful acts covered in this Protocol with a view to compiling a database that will enable the non-governmental organizations and States Parties to exchange information.

Article 13

Cooperation with non-States Parties

States Parties [shall][89] [are encouraged to][90] cooperate with non-States Parties to prevent and punish[91] trafficking in persons and to protect and care for victims of such trafficking. To that end, the appropriate authorities of each State Party [shall][92] [are encouraged to][93] notify the appropriate authorities of a non-State Party whenever a victim of such trafficking who is a national of the non-State Party is in the territory of the State Party.

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[86] The language in brackets was proposed in document A/AC.254/8.

[87] The language in brackets was proposed in document A/AC.254/8.

[88] The language in brackets was proposed in document A/AC.254/4/Add.3.

[89] The language in brackets was proposed in document A/AC.254/8.

[90] The language in brackets was proposed in document A/AC.254/4/Add.3.

[91] See footnote 1 above.

[92] The language in brackets was proposed in document A/AC.254/8.

[93] The language in brackets was proposed in document A/AC.254/4/Add.3.

Article 14[94]

Other measures

1. States Parties may adopt measures stricter than those provided for in this Protocol if, in their opinion, such measures are desirable to prevent, combat and eradicate the crimes covered by this Protocol.

2. States Parties shall take such additional legislative or other measures as they consider appropriate to prevent means of transport operated by commercial carriers from being used in the commission of offences established under this Protocol. Such measures shall include, in appropriate cases, fines and forfeiture to ensure that carriers, including any transportation company or the owner or operator of any vessel or vehicle, screen all passengers to see that each has a valid passport and visa, if required, or any other documentation necessary for legal entry into the receiving State.

3. Each State Party shall consider adopting measures that permit, in appropriate cases, the revocation or denial of visas to persons, including foreign officials, known to be implicated in crimes covered by this Protocol.

Article 15[95]

Savings clause

Nothing in this Protocol shall affect the rights, obligations and responsibilities of States and individuals under international law, including international humanitarian law and international human rights law and, in particular, where applicable, the 1951 Convention[96] and the 1967 Protocol[97] relating to the Status of Refugees.

Article 16

Other provisions

The provisions of articles [...] of the Convention shall also apply *mutatis mutandis* to this Protocol.

Article 17

Signature, accession and ratification

1. This Protocol shall be open for signature, by any State that has signed the Convention, at [...] from [...] to [...] and thereafter at United Nations Headquarters in New York until [...].

2. This Protocol is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.

3. This Protocol is subject to accession by any State that has signed or acceded to the Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

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[94] See footnote 63 above.

[95] See footnote 63 above.

[96] United Nations, *Treaty Series*, vol. 189, No. 2545.

[97] Ibid., vol. 606, No. 8791.

Article 18

Entry into force

1. This Protocol shall enter into force on the thirtieth day following the date of deposit of the [...] instrument of ratification or accession with the Secretary-General of the United Nations. This Protocol shall not enter into force before the Convention has entered into force.

2. For each State Party ratifying or acceding to the Protocol after its entry into force, the Protocol shall enter into force on the thirtieth day after the deposit by such State of the instrument of ratification or accession.

[The Protocol can rely on the Convention's provisions on denunciation, amendment, languages and depositary.]

IN WITNESS WHEREOF, the undersigned, being duly authorized by their respective Governments, have signed this Protocol.